IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LORI A. REPPERT,	)	
	)	Civil Action
Plaintiff	)	No. 05-CV-01403
	)	
vs.	)	
	)	
APRIL KUMMERER,	)	
DONALD FRENCH,	)	
MICHAEL FAULKNER,[1]	)	
THOMAS SEDOR,	)	
MARK MARINO,	)	
WILLIAM LAKE and	)	
CITY OF ALLENTOWN,	)	
	)	
Defendants	)	

* * *

APPEARANCES:
RICHARD J. ORLOSKI, ESQUIRE
On behalf of Plaintiff

DONALD E. WIEAND, JR., ESQUIRE
On behalf of Defendants

* * *

O P I N I O N

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on Defendants' Motion for Summary Judgment filed February 9, 2006. Plaintiff's Response to Defendants' Motion for Summary Judgment was filed

[1] On August 30, 2006 at the commencement of trial, counsel verbally agreed on the record to amend the caption to change the designation of defendant "William Faulkner" to read "Michael Faulkner" in order to reflect the correct name of Officer Faulkner.

March 17, 2006. For the reasons expressed below, we grant in part and deny in part Defendants' Motion for Summary Judgment.

Specifically, we grant Defendants' Motion for Summary Judgment on Count One regarding defendant William Lake based upon the doctrine of qualified immunity. Moreover, we grant defendant's motion regarding Counts Five (Civil Conspiracy), Six (Policy of Racial Profiling) and Seven (Rouge Policy of Warrantless Strip Searches). In all other respects we deny defendants' motion for summary judgment, because there are genuine issues of material fact regarding whether plaintiff gave consent to search her person and car and regarding her responses to the questions of various police officers.

JURISDICTION AND VENUE

Jurisdiction is based on federal question jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, and 42 U.S.C. § 1983. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the events giving rise to the claims allegedly occurred in this judicial district, namely in Lehigh County, Pennsylvania.

PROCEDURAL HISTORY

Complaint

On March 24, 2005 plaintiff Lori A. Reppert filed a Complaint against defendants Allentown Police Officer Mark Marino, Chief of Police Joseph Blackburn, Inspector R. Dane

Merryman and the City of Allentown alleging numerous violations of 42 U.S.C. § 1983 through the Fourth, Fifth and Fourteenth Amendments of the United States Constitution.

First Amended Complaint

By Order of the undersigned dated May 16, 2005 we approved a Stipulation of the parties which permitted plaintiff to file an Amended Complaint. On May 26, 2005 plaintiff filed her Amended Complaint.

The caption of plaintiff's first Amended Complaint named the same defendants as were named in the original Complaint. However, the body of the Amended Complaint contained new allegations against Allentown Police Officers April Kummerer, Donald French, William Faulkner, Thomas Sedor and William Lake, although they were not included in the caption. Moreover, the body of plaintiff's first Amended Complaint did not contain any allegations against Chief Blackburn or Inspector Merryman, although they were included as defendants in the caption of the Amended Complaint.

Second Amended Complaint

By Order of the undersigned dated May 26, 2005 and filed May 27, 2005 we approved the Stipulation of the parties to dismiss defendants Blackburn and Merryman and include as defendants officers Kummerer, French, Faulkner, Sedor and Lake.

Accordingly, on June 2, 2005 plaintiff filed a second Amended Complaint.

The sole amendment was to correct the designation of defendants in the caption to read "April Kummerer, Donald French, William Faulkner, Thomas Sedor, Mark Marino, William Lake and City of Allentown, Defendants". In all other respects, the allegations in the body of the second Amended Complaint were identical to the body of the first Amended Complaint.

Defendants' Motion for Summary Judgment filed on February 9, 2006 applies to plaintiff's second Amended Complaint.

ALLEGATIONS

Plaintiff's seven-count second Amended Complaint is brought pursuant to 42 U.S.C. § 1983. It purports to allege numerous violations of the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. Specifically, Count One alleges defendants Lake, French, Faulkner and Sedor illegally arrested plaintiff.

Count Two avers an illegal search of plaintiff's vehicle by defendants French, Faulkner and Sedor. Count Three asserts that defendants French, Faulkner and Sedor conducted an illegal pat-down search of plaintiff. Count Four alleges that defendants Kemmerer, Marino, French, Faulkner and Sedor conducted an unreasonable search of plaintiff's body cavities.

Count Five avers that all individual defendants participated in a civil conspiracy against plaintiff. Count Six asserts that defendant City of Allentown had an illegal policy of racial profiling. Count Seven alleges that defendants French and the City of Allentown had a "rogue policy" of warrantless strip searches.

SUMMARY OF DECISION

Summary Judgment Motion

Our reasons for granting in part and denying in part Defendants' Motion for Summary Judgment are more specifically as follows.

Qualified Immunity

We grant summary judgment in favor of defendant Officer Lake on Count One (illegal arrest) because Officer Lake is entitled to qualified immunity. He is entitled to such immunity because police officers are entitled to rely on information communicated by fellow police officers when making probable cause determinations.

All Officer Lake did was to respond to a radio call from Officers Faulkner and Sedor for a marked police vehicle to pull over a suspect based upon Officers Faulkner and Sedor's belief that a drug transaction had just taken place. Therefore, Officer Lake did not violate any constitutional right of plaintiff.

Because Sergeant French is not entitled to qualified immunity regarding Count One, we deny his request for summary judgment on that count. Sergeant French is not entitled to qualified immunity because he was the ranking officer at the scene and had the authority to stop the intrusion and allow plaintiff to leave after nothing was found on her person, in her clothing, or in her vehicle.

Moreover, if plaintiff did not consent to the search of her person and vehicle (as she maintains and defendants dispute), those searches would be unreasonable, and therefore unconstitutional, based upon the facts and circumstances known to the police collectively, and because the right to be free from unreasonable searches is a well-settled constitutional right.

Because Officer Kummerer is not entitled to qualified immunity regarding Count Four (unreasonable strip search), we deny her request for summary judgment on that count. The right to be free from a strip search without consent, a warrant or exigent circumstances is a clearly established constitutional right. There was neither a search warrant, nor exigent circumstances present here. Because there is a dispute regarding whether plaintiff consented to the strip search, Officer Kummerer is not entitled to qualified immunity regarding Count Four.

Factual Disputes

We deny the motions for summary judgment of Officers Franch, Faulkner and Sedor regarding Count One (illegal arrest), Count Two (illegal vehicle search), Count Three (illegal pat-down search), and Count Four (unreasonable strip search) because there are numerous material factual disputes rendering summary judgment inappropriate on these counts. For the same reason we deny the motions for summary judgment of Officers Kummerer and Marino regarding Count Four.

The factual disputes related to Count One include whether the officers had reasonable suspicion that criminal activity was afoot or probable cause when they stopped and detained plaintiff, whether plaintiff was in custody, whether she was free to leave, whether she consented to the search of her person and vehicle, the tone and demeanor of the police in questioning plaintiff, and the nature of plaintiff's answers to police questions.

Similarly, the factual disputes concerning Counts Two and Three are whether plaintiff gave consent to search her person and vehicle, what answers plaintiff gave to police questioning, and whether her detention was reasonable in scope. Finally, disputes concerning whether plaintiff consented to a strip search and a search of her body cavities render summary judgment inappropriate regarding Count Four.

Civil Conspiracy

Defendants are entitled to summary judgment regarding Count Five. Plaintiff's claim of civil conspiracy fails because plaintiff fails to implicate any federal rights as a result of defendants' failure to write police reports. Plaintiff has no federal constitutional, statutory, decisional or other right to have police reports prepared or filed.

Racial Profiling

We grant summary judgment on Count Six because under the circumstances of this case plaintiff is not a member of a protected class, and the city cannot be found liable on a Section 1983 action on the basis of respondeat superior or vicarious liability. Plaintiff fails to establish any formal policy of the police department permitting or encouraging racial profiling. A single instance of unconstitutional conduct by a municipal employee without policy-making authority is insufficient to establish a custom or policy. Moreover, plaintiff has not established that any similarly situated person in an unprotected class was treated more favorably for the same conduct.

Police Department Policy

We grant summary judgment regarding Count Seven because plaintiff has offered no evidence that Sergeant French either had policy-making authority or, in fact, initiated the custom of

doing strip searches, however characterized, in the back of police paddy wagons.

FACTS

Incident

Based upon the pleadings, record papers, depositions, and exhibits, Defendant's Statement of Facts in Support of Their Motion for Summary Judgment[2] and Plaintiff's Counter Statement of Facts in Opposition to Defendant's Motion for Summary Judgment[3], the pertinent uncontested facts are as follows.

On the evening of February 8, 2005, Officers Thomas Sedor and Michael Faulkner, members of the Vice and Intelligence Unit of the Allentown Police Department were working in plain clothes and in an unmarked car in Allentown, Lehigh County, Pennsylvania. In addition, on that same night, Sergeant Donald French, who was employed by the Allentown Police Department and

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[2] We have only considered those facts which plaintiff has admitted. Specifically, we adopt as admitted paragraphs 1-6, 9, 11-15, 18, 20-28, 31, 34-36, 42, 44, 49-50, 52, 55-61, 69-70, 72-74, 76-79, 81, 83, 86-95, 110-118 and 129-130 of defendants' statement of material facts. We conclude that the averments contained in the remaining proposed statement of facts are either disputed by plaintiff or are not material to any genuine issue of fact in this case.

[3] We have only considered those facts which defendants have admitted. Specifically, we adopt as admitted paragraphs 11, 14-17, 20-21, 29-30, 32-33, 37-38, 43, 51, 53, 55, 57, 76-78 and 85-86 of plaintiff's counter statement of material facts. We conclude that the averments contained in the remaining proposed counter statement of facts are either disputed by defendants or are not material to any genuine issue of fact in this case.

assigned to the Vice and Intelligence Squad, was also working in plain clothes and in an unmarked car.

Officer Sedor is an experienced police officer, having been employed by the Allentown Police Department for nearly 16 years, of which 12 years have been spent as a vice officer. Officer Faulkner is also an experienced police officer with almost 15 years experience with the Allentown Police Department of which 12 years were spent in the vice department.

In the two-week period prior to February 8, 2005, members of the Allentown Police department made at least five arrests, in three separate incidents, for possession or delivery of drugs. These arrests were the result of drug transactions occurring in the 14th and Union Street neighborhood in Allentown. In addition, on February 9, 2005, a fourth drug arrest was made for a transaction in the same neighborhood. In several of the drug arrests, either drug purchasers or dealers admitted using the pay phone at 14th and Union Streets to facilitate their drug transactions.

On February 8th between 10:30 and 10:45 p.m., officers Faulkner and Sedor observed plaintiff Lori Reppert arrive and park her car in the vicinity of the corner of 14th and Union Streets. Approximately 20 minutes later, or at about 11:03 p.m., plaintiff got out of her vehicle and used the pay phone at that corner. Another unidentified individual had used the pay phone

moments before, but that individual was not investigated for drugs. The police did not have a wiretap on the pay phone.

After using the pay phone, plaintiff returned to her vehicle and waited with the engine running for approximately ten minutes. During this time, Officers Faulkner and Sedor ran a registration check on the license plate of plaintiff's vehicle. The check revealed that the vehicle was registered to someone with an Emmaus, Pennsylvania address.

Approximately ten minutes after plaintiff used the pay phone, two individuals, an unidentified African-American male, and a Hispanic female later identified as Ellie Nieves, approached plaintiff's vehicle and got in. Plaintiff did not know the male, who was a friend of Miss Nieves, but agreed to give him a ride across town, at the request of Miss Nieves. The male passenger sat in the front seat; and Miss Nieves, with her dog, sat in the back seat of plaintiff's car.

While Officers Faulkner and Sedor were observing plaintiff's vehicle, they contacted Sergeant French and asked for his assistance. Sergeant French did not arrive at the scene until after plaintiff and her passengers drove away from the 14th and Union Street location.

Officers Faulkner and Sedor followed plaintiff's car from 14th and Union Streets. Sergeant French joined in following plaintiff's vehicle as it traveled eastbound on Walnut Street.

Plaintiff proceeded to the east side of Allentown and stopped at a Hess gas station and store on Hanover Boulevard. At the gas station, the male passenger exited the vehicle, made a purchase at the store and got back into plaintiff's vehicle.

Plaintiff then drove to an apartment house on the East side of Allentown, where the male passenger exited the car. Miss Neives did not move from the backseat of the car to the front seat when the male passenger left the car. Plaintiff then proceeded toward center city Allentown.

At this point, Officers Faulkner and Sedor radioed for a uniformed officer, in a marked police vehicle to stop plaintiff's vehicle so that Officers Faulkner and Sedor could speak with the occupants of plaintiff's vehicle and investigate further. Neither Officers Faulkner or Sedor saw either an exchange of money or drugs at any time before asking to have plaintiff's vehicle pulled over.

Officer William Lake, a uniformed Allentown Police Officer, was on routine patrol when he received the request of Officers Faulkner and Sedor to stop plaintiff's vehicle. After plaintiff crossed American Parkway in center city Allentown, approximately in the 300 block of West Hamilton Street, Officer Lake activated his flashing lights and pulled over plaintiff's vehicle.

Officer Lake was not involved in the decision to stop plaintiff's vehicle, to search the vehicle or to search plaintiff's person and had no further interaction with plaintiff after stopping her vehicle. In stopping plaintiff's vehicle, he relied solely upon the request of Officers Faulkner and Sedor.

When plaintiff's car stopped, Officers Faulkner and Sedor approached the vehicle, displayed their badges, asked the occupants to get out of the vehicle and separated the two occupants. Plaintiff was asked the name of the male passenger who had been dropped off and plaintiff responded that she did not know his name. Also, when initially asked, plaintiff denied having or using any illicit drugs.

Soon after the stop of plaintiff's vehicle, Officer Mark Marino arrived at the scene. Shortly after his arrival, Officer Marino advised plaintiff of her Miranda[4] rights. During this time, plaintiff repeatedly told officers that she did not have any drugs.

The parties dispute what occurred next. Defendants contend that plaintiff consented to a pat-down search of her person, a search of her vehicle and finally, to a strip-search of her person. Plaintiff denies giving consent to search of either her person or vehicle.

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[4] Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Plaintiff was initially searched by Officer Faulkner. The search included a pat-down of plaintiff and plaintiff turning her pockets inside out. There were no drugs or contraband found in this initial search. Thereafter, Officers Faulkner, Sedor and Sergeant French conducted a search of plaintiff's vehicle. This search included the front and back passenger compartment, and may have included the trunk of the car.[5] There were no drugs or contraband found during the search of the vehicle. After the vehicle search, plaintiff and her passenger were strip-searched.

Officer April Kummerer was not originally present at the scene of the vehicle stop, but was summoned to the scene from police headquarters by Officer Marino and told that she was needed at the scene to conduct a search of the two females. Officer Kummerer assumed, based upon her experience, that when she arrived at the scene and was asked to make a search, that the officers at the scene had obtained consent to conduct a strip search. Officer Kummerer first searched Miss Nieves, the Hispanic female, in the rear of the paddy wagon using two flashlights for illumination. Officer Kummerer found no drugs or contraband as a result of the search of Miss Neives.

After the search of Miss Nieves was completed, plaintiff was escorted to the rear of the paddy wagon by Sergeant

[5] It is not entirely clear from the deposition testimony of Officers Faulkner and Sedor, Sergeant French and plaintiff Lori Reppert whether the police searched the trunk. For the purposes of this motion, we considered the trunk to have been searched.

French. While escorting plaintiff to the paddy wagon, Sergeant French told plaintiff "if you've got anything to admit, admit it now."

Upon reaching the paddy wagon, plaintiff entered the paddy wagon. Once plaintiff was inside the vehicle, Officer Kummerer positioned herself between plaintiff and the rear door, closing the inner screen door but leaving the outside paddy wagon door slightly ajar. The parties dispute how far the outside door was open and if anyone could see in through the partially open door.

During the search of plaintiff, she was required to remove all of her clothing and was required to bend over at the waist so that Officer Kummerer could visually observe the private areas of plaintiff's body. This search did not reveal any drugs or contraband. Officer Kummerer did not physically touch plaintiff during the strip search.

When the visual search was completed, plaintiff got dressed, Officer Kummerer knocked on the door of the paddy wagon for the officer outside to open the doors, plaintiff departed the paddy wagon and returned to the area of her vehicle.

When plaintiff approached her vehicle, she observed Miss Nieves talking to several officers "and they were all kind of laughing and stuff". Plaintiff then got into her vehicle and was told she could leave. The entire episode from the time

plaintiff's vehicle was originally stopped to the time plaintiff left the scene took approximately 30 minutes.

No criminal charges concerning this event were ever filed against plaintiff or her passenger Miss Nieves. At no time did any Allentown Police Officer attempt to obtain written consent from either plaintiff or Miss Nieves for any of the searches conducted.

Police Department Policies

On February 8, 2005, the date of the incident giving rise to plaintiff's Complaint, the City of Allentown Police Department had a Policy Manual. It was adopted on September 30, 2004 and made available to all members of the police department on January 19, 2005. The police department policies include, but are not limited to, policies against biased-based profiling; and policies for conducting warrantless searches and seizures including stop and frisk searches, vehicle searches and searches involving exigent circumstances.

Moreover, On February 8, 2005 the police department had guidelines governing the operations of the cell block at police headquarters and conducting strip and body cavity searches at headquarters. Finally, Allentown Police Department policy required every police officer making a vehicle stop, vehicle search, pat-down search or strip search to complete a written incident report.

On March 10, 2005, subsequent to this incident but prior to completion of the internal investigation discussed below, Chief Blackburn issued Special Order 2005-011 concerning search and seizure and departmental reporting requirements. More specifically, the Special Order addressed investigative detentions, field interviews, stop and frisk searches and the justification for pat-down searches. In addition, Chief Blackburn issued written directives concerning the conducting of strip searches, the documentation required for the search of a person or vehicle, and the requirement to obtain a written consent to search when consent is given.[6]

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[6] Special Order 2005-011 provides in pertinent part:

> The requirements of the regulations are based on a body of Constitutional mandates and long-standing U.S. Supreme Court case law. This directive is issued to members to emphasize important requirements and restrictions imposed by the Constitution and case law, and to emphasize the absolute mandate for members to comply with statutory and regulatory requirements and restrictions.
>
> Investigative detention/field interviews/stop and frisk may only occur with articulable facts, taken within the totality of the circumstances, that cause a member to reasonably suspect criminal activity has been, is being, or is about to be committed. Police Officers may stop persons **ONLY** when reasonable suspicion is present. Members who detain a person under these conditions shall document their actions and the basis for the reasonable suspicion in every case, using the appropriate Department report.
>
> Members may conduct a pat-down search **ONLY** when persons have been legitimately stopped with reasonable suspicion, and **ONLY** when the member has reasonable and articulable fear for his or another person's safety. If the external feeling of a person's clothing fails to disclose evidence of a weapon or other specific

(Footnote 6 continued):

Police Investigation

On February 17, 2005 plaintiff's counsel sent a letter to the Allentown Police Department. As a result of this letter, the Allentown Police Department initiated an internal investigation of the incident. Specifically, on February 21, 2005 Chief of Police Joseph C. Blackburn ordered an administrative investigation to be initiated by the Allentown Police Department Office of Professional Standards. Plaintiff's

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(Continuation of footnote 6):

> contraband (pursuant to the "Plain Feel Doctrine") **no further search may be made**. The pat-down search and the justification for the search shall be included in the reporting documentation of the investigative detention.
>
> The search of a vehicle without a search warrant, without consent to search, or without probable cause accompanied by exigent circumstances, must be limited to a plain view search. When a vehicle search is conducted, members shall complete an Offense/Incident report. If the search is a consent search, members shall ensure completion of a Consent to Search form.
>
> Strip Searches shall not be conducted on any person who is not in custody. Strip searches may only be conducted if there is probable cause to believe the person in custody is concealing a weapon, a controlled substance, or contraband. Strip searches shall not be conducted on the street; they shall only be conducted by members of the same sex as the suspect, and where the search cannot be observed by others not physically conducting the search or not absolutely necessary to conduct the search in safety.
>
> All strip searches shall be documented on the detainee arrest report, including the elements of probable cause used to justify the members actions.

Allentown Police Department Directive dated March 10, 2005, attached as Exhibit H to Appendix H of the Appendix of Exhibits to Defendants' Statement of Facts in Support of Their Motion for Summary Judgment filed February 9, 2006. (Emphasis in original.)

counsel was notified of the investigation by letter dated February 22, 2005.

As part of this internal investigation, Chief Blackburn learned that none of the officers involved in this incident filed an incident report. Moreover, prior to the receipt of the February 17, 2005 letter, Chief Blackburn had no knowledge that members of the Allentown Police Department were conducting consensual strip searches in paddy wagons at the site of an arrest or detention.

On February 23, 2005 Assistant Chief of Police Ronald Manescu met with members of the Vice and Intelligence Unit to discuss the practice of conducting strip searches in the field, as well as the lack of documentation of the incident involving plaintiff. At this meeting, Assistant Chief Manescu verbally ordered the Vice and Intelligence Unit to immediately stop the practice of conducting consensual strip searches in the field. Assistant Chief Manescu further ordered the Vice and Intelligence Unit members to prepare written reports on all future vehicle stops, investigative detentions, field interviews and stop and frisks regardless of whether contraband was seized or an arrest was made.

On March 30, 2005 Chief Blackburn issued a Memorandum to Sergeant Donald French of the Vice and Intelligence Unit requiring each of the officers involved in the stop of

plaintiff's vehicle on February 8, 2005 to answer certain enumerated questions and provide detailed account of the incident. Each of the officers involved in the February 8, 2005 incident provided written answers to the written questions and copies of all such answers were provided to plaintiff's counsel prior to initiation of discovery in this case.

As part of the administrative investigation, the Allentown Police Department interviewed an individual named Timothy Devanney, who contacted the police indicating that he had information pertinent to the February 8, 2005 incident involving plaintiff.

As a result of the internal investigation, the Office of Professional Standards determined that none of the officers involved in the incident prepared written reports of the vehicle stop, the field interview, the vehicle search or the strip search. On September 6, 2005, as a result of the failure of the officers to prepare written reports in accordance with Allentown Police Department policies, Chief Blackburn issued letters of reprimand to Officers Faulkner, Sedor and Kummerer.

Because Sergeant French and Officer Marino had retired prior to completion of the investigation, and were no longer members of the Allentown Police Department, they received no discipline.

CONTENTIONS

Above, we outlined the undisputed facts involved in this case. However, the parties disagree on a number of facts and on the significance, if any, of certain facts. Accordingly, below, we outline the facts and contentions of the parties which are disputed in this matter.

Plaintiff's Contentions

The contentions of plaintiff Lori Reppert are as follows:

Plaintiff Lori Reppert is a thirty-four-year-old disabled woman who suffers from severe diabetes and diabetic ulcers on both feet. Moreover, she had a prior precancerous pancreatic tumor, which caused doctors to remove half of her pancreas, spleen, gall bladder and part of her bowel.

On February 8, 2005 she spent the day with Ellie Nieves, the seventeen-year-old niece of a long-time friend. Miss Nieves resided at Seventh and Chew Streets in Allentown.

On February 8, 2005 plaintiff and Miss Nieves went shopping during the day and purchased clothes for the birthday of Miss Neives' sister. After the shopping trip, plaintiff dropped Miss Neives off at a friend's house at 14th and Madison Streets in Allentown. Later, at approximately 6:30 p.m., plaintiff returned to the 14th and Madison Street address, picked up Miss Neives, and the two women went to dinner. At approximately 9:15

or 9:30 p.m., plaintiff dropped Miss Neives off again at the 14th and Madison Street address and returned to her home in Emmaus, Pennsylvania.

Approximately an hour-and-a-half after dropping off Miss Neives, plaintiff received a phone call from Miss Neives, who asked plaintiff to return to Allentown to take Miss Neives to her sister's residence to deliver the presents bought earlier that day. Plaintiff returned to the place where she had dropped off Miss Neives and waited for her to come outside. After about twenty minutes, plaintiff called her boyfriend collect from a pay phone and asked him to call and tell Miss Neives that if she did not come outside, plaintiff was going to leave.

Miss Neives did not appear for approximately ten minutes. When she did appear, she showed up with her dog and an African-American male whom plaintiff did not know. Miss Neives asked if plaintiff would take her friend across town before they went to Miss Neives' sister's home. Plaintiff agreed, and drove with Miss Neives and her dog in the back seat, and the African-American male in the front passenger seat.

Plaintiff proceeded to the Hess gas station on Hanover Avenue so that the male passenger could buy some cigarettes. Then plaintiff took the male passenger home. After the passenger exited plaintiff's vehicle, he thanked her for the ride. Miss

Neives remained in the back seat with her puppy because the dog had a history of jumping around and needed to be controlled.

As plaintiff proceeded toward the sister's home she crossed American Parkway in Center City Allentown, where a patrol cruiser activated its lights and pulled over plaintiff's vehicle. Plaintiff did not violate any traffic laws warranting the stop.

Officer Sedor was the first officer to approach plaintiff's vehicle. Plaintiff and her passenger were directed to exit the vehicle; and the officers immediately dug into plaintiff's pockets, patted her down, asked her to open her mouth and were yelling "where's the drugs." Plaintiff did not consent to this search of her person. Moreover, without obtaining consent, the officers searched each of the pockets in her jacket and patted down her pants.

Thereafter, the officers told plaintiff that they were going to search her vehicle and told her if they found any drugs that they were going to charge her with corrupting the morals of a minor because Miss Nieves was only seventeen years old. The officers neither asked for, nor were given, plaintiff's permission to search the vehicle.

After searching plaintiff's car and finding nothing illegal, the officers called for a female officer who plaintiff presumed would be patting her down. Furthermore, after radioing for a female officer, Officer Marino arrived driving an Allentown

Police department paddy wagon. Shortly after Officer Marino's arrival, he gave plaintiff her Miranda rights.

During this whole episode, plaintiff continually told the police that she did not have any drugs. Moreover, plaintiff explained to the officers that because of her disabilities, she did not use illegal drugs and that taking drugs would be especially bad for her. In response, the officers told her that she would not do well in jail with her disabilities.

Officer Kummerer arrived and took Miss Nieves to the paddy wagon, where she was strip-searched. During this time, plaintiff was allowed to have a cigarette. In addition, while Miss Nieves was being searched, plaintiff contends that Sergeant French dangled a long glass cylinder with a flower in it in front of plaintiff repeatedly asking plaintiff what it was and if it was hers. Sergeant French was implying that the glass cylinder was some sort of drug paraphernalia.

After the officers were finished with Miss Nieves in the paddy wagon, plaintiff was escorted to the back of the paddy wagon by Sergeant French who told her "if you've got anything to admit, admit it now." Plaintiff was not told that she was going to be strip searched and assumed that the female officer was going to pat her down.

When plaintiff entered the paddy wagon and before she started removing any clothing, Officer Kummerer told her to take

off her shoes and socks. Plaintiff explained to Officer Kummerer that because of her foot ulcers, she was afraid of getting an infection from the paddy wagon floor. Despite these expressed concerns, Officer Kummerer forced plaintiff to take off every article of clothing, and while plaintiff was naked, she was directed to bend over and cough while Officer Kummerer examined her anus and vagina.

While plaintiff was in the paddy wagon, the inside wire mesh gate was closed but the metal outside door was left open approximately one foot. Moreover, there was a window approximately three feet up in the front of the paddy wagon which permitted plaintiff to see out and see her car. In addition, there were two lights pointed at plaintiff while she was disrobing.

As noted above, no drugs or contraband were found on plaintiff and plaintiff did not consent to the search of her person or vehicle.

In addition, the police had neither reasonable suspicion that criminal activity was afoot, nor probable cause to pull over plaintiff's vehicle nor to conduct a search of either her person or her vehicle. In addition, plaintiff was subjected to an unreasonable detention which constituted an arrest. Moreover, plaintiff was racially profiled because she was pulled

over because an African-American male and Hispanic female entered her car.

The Allentown Police Department conspired to cover up this incident and to cover up the policy of Sergeant French and other officers of conducting illegal strip searches in the back of paddy wagons. Officers Marino, Faulkner and Kummerer together with Sergeant French all admitted to conducting numerous strip searches in the back of paddy wagons. Furthermore, they all admitted not filing police reports when nothing was found as a result of these searches.

Finally, none of the Allentown Police Officers involved in this matter, including Officers Faulkner and Sedor, observed either an exchange of money or a drug transaction of any type. Thus, the police had neither reasonable suspicion, nor probable cause, to stop plaintiff's vehicle or to conduct any of the searches performed.

Defendants' Contentions

Following are the contentions of defendants, which are disputed in this matter:

In light of their combined experience, Officers Faulkner and Sedor had observed sufficient facts to support reasonable suspicion that plaintiff or her passengers had engaged in a drug transaction and had drugs in their possession at the time of the traffic stop. Specifically, the following factors

support their conclusion that they had witnessed a drug deal take place in plaintiff's vehicle:

1. The pay phone which they were surveilling was known to them as one which was frequently used by drug buyers to contact drug dealers operating in that neighborhood.

2. The neighborhood near 14th and Union Streets was known to the officers as one of high drug activity.

3. Members of the vice squad had made at least five arrests for drug trafficking in three separate incidents in the two week period prior to the evening of February 8, 2005.

4. While the officers were conducting their surveillance, plaintiff drove into the neighborhood late at night and parked her vehicle with the motor running and the lights on facing the wrong way in front of the pay phone at 14th and Union Streets.

5. After waiting in her vehicle, plaintiff got out of the car, left the motor running and the lights on and made a brief telephone call from the pay phone.

6. Plaintiff then got back into her vehicle, drove around the block and parked her car again for another ten to fifteen minutes with the engine running and the lights out.

7. After that, an Hispanic female and an African-American male approached plaintiff's vehicle and got in, with the male in the front passenger seat and the female in the back seat.

8. The vehicle pulled out and proceeded to the East side of Allentown.

9. In the experience of Officers Faulkner and Sedor, it was fairly common for a drug buyer to provide a ride to a drug dealer. In the past when Officer Faulkner had worked in an undercover capacity, drug dealers had demanded that he provide them with rides as part of the drug deals.

10. Plaintiff's vehicle stopped at an apartment building on East Hamilton Street in Allentown, which building was known to the officers as having been involved in prior drug activity.

11. When the male passenger got out of the vehicle, he looked around nervously as if he were afraid of being watched or followed.

12. Instead of entering the building through the well-lit front entrance, the male passenger walked into the shadows on the side of the building and entered the building through a poorly lit rear side entrance.

13. When the male passenger exited the vehicle, the female passenger did not move into the front passenger seat as would be customary with friends. Instead, the female passenger remained in the rear seat.

14. Plaintiff's vehicle then proceeded back into Center City Allentown with plaintiff driving and the female passenger in the back seat of the car.

All of the foregoing factors gave Officers Faulkner and Sedor reasonable suspicion to believe that a drug transaction had just occurred. As a result, they radioed for a uniformed officer in a marked police vehicle to stop plaintiff's vehicle. Officer Lake, while on routine patrol was the officer who responded to this request and pulled over plaintiff's vehicle.

When plaintiff's car was stopped, Officers Faulkner and Sedor approached the vehicle, displayed their badges and asked the occupants to get out. When plaintiff and Miss Nieves exited the car, the officers informed them that the officers were conducting a drug investigation.

When plaintiff was asked about her activities, plaintiff initially told Officer Faulkner that she had driven directly from Emmaus to downtown Allentown and denied stopping anywhere to use a pay phone. When informed by the officers that

they had observed her use the pay phone at 14th and Union Streets, plaintiff changed her story and said that she had called her husband collect to have him call the person to whom she was supposed to give a ride and to tell her that plaintiff was waiting outside in her car.

When asked by the officers why she had driven from Emmaus to Allentown, plaintiff answered that she was giving a friend a ride. However, when plaintiff was asked to name her friend, she could only give a first name of the female passenger and did not know the name of the male passenger. Furthermore, when plaintiff was asked what she received for giving a ride to two individuals whose names she did not know, she denied getting anything in return for the ride.

Defendants asked plaintiff if she used drugs, which plaintiff initially denied. When Officer Sedor asked plaintiff if she would mind undergoing a chemical test which would reveal whether she had any drugs in her system, plaintiff changed her story again and admitted that she had used drugs recently but was not using drugs that day.

Plaintiff's appearance on February 8, 2005 was disheveled and dirty. Because of Officer Sedor's experience as a vice officer, and based upon the tone of plaintiff's voice and the level of her anxiety and excitement, Officer Sedor concluded that plaintiff was a crack cocaine user. Furthermore, based upon

plaintiff's answers to the questions posed to her, Officers Faulkner and Sedor concluded that plaintiff's story made little or no sense.

All of the foregoing factors in combination with the observations made prior to the vehicle stop, provided probable cause to search plaintiff and her vehicle for drugs.

In addition, plaintiff gave express verbal consent to search her vehicle and her person, including a pat-down search and a strip search. Officers Faulkner, Sedor and Sergeant French conducted a consensual search of plaintiff's car, which included the inside of the passenger compartment and may have included the trunk. Defendants found no illegal drugs in plaintiff's car.

Thereafter, Officer Faulkner asked plaintiff if she would agree to turn out the pockets of her pants and jacket, and plaintiff agreed to do so. When plaintiff turned out her pockets, the officers found no drugs or contraband.

When the search of the vehicle and plaintiff's pockets did not reveal any drugs, Officer Faulkner asked plaintiff if she would agree to a more thorough search of her person by a female officer and plaintiff agreed to such a search.

After Officer Faulkner obtained consent from plaintiff to conduct a strip search, Officer Marino summoned Officer Kummerer from police headquarters to the scene. Upon her arrival at the scene, Officer Kummerer was informed by Officer Marino

that they needed her to conduct a search of the two females. Officer Kummerer assumed that the officers at the scene had obtained consent from both females to conduct the strip search. This assumption was based upon her experience, and upon her belief that the officers would not have summoned her to the scene to make a search unless they had consent for the search.

The strip search of Miss Nieves was conducted first, followed by the search of plaintiff. Once plaintiff and Officer Kummerer were inside the paddy wagon, the rear doors to the paddy wagon were closed. The inner wire mesh door was completely closed and latched, and the outer door was closed to within several inches of the rear of the paddy wagon. The outer door was left slightly adjar so that the officer who was stationed outside could hear if Officer Kummerer called for assistance.

During the search of plaintiff by Officer Kummerer, none of the officers outside the paddy wagon could see into the interior of the wagon. There were several reasons no one could see into the paddy wagon: the solid outer door and the wire mesh inner door precluded any observations into the wagon; Officer Kummerer's position between plaintiff and the door blocked any view of plaintiff; and none of the officers outside the wagon made any attempt to look into the interior of the wagon.

Plaintiff did not say anything to Officer Kummerer about foot ulcers, nor did she express any objection to the strip

search being conducted in the paddy wagon. Moreover, plaintiff specifically stated that she did not care about being strip-searched because she did not have anything.

After the February 8, 2005 incident, the Allentown Police Department was contacted by Tim Devanney. Mr. Devanney indicated that he was a friend of plaintiff and her boyfriend Brian Woods. Mr. Devanney further informed the police that he had on numerous occasions used crack cocaine with plaintiff and Mr. Woods. Furthermore, Mr. Devanney told police that the young Hispanic female with plaintiff on February 8, 2005 was a regular supplier of crack cocaine to plaintiff.

Mr. Devanney further informed the police that shortly after the February 8, 2005 incident, plaintiff informed him that on the evening of February 8, 2005 plaintiff had driven to Allentown from Emmaus to pick up Miss Nieves for the purpose of transporting her across town in exchange for a small amount of crack cocaine. Finally, Mr. Devanney stated that plaintiff admitted to him that she gave consent for the search of her person and vehicle, including the strip search.

STANDARD OF REVIEW

In considering a motion for summary judgment, the court must determine whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of

material fact and that the moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Federal Home Loan Mortgage Corporation v. Scottsdale Insurance Company, 316 F.3d 431, 433 (3d Cir. 2003). Only facts that may affect the outcome of a case are "material". Moreover, all reasonable inferences from the record are drawn in favor of the non-movant. Anderson, supra.

Although the movant has the initial burden of demonstrating the absence of genuine issues of material fact, the non-movant must then establish the existence of each element on which it bears the burden of proof. See Watson v. Eastman Kodak Company, 235 F.3d 851, 857-858 (3d Cir. 2000). Plaintiff cannot avert summary judgment with speculation or by resting on the allegations in her pleadings, but rather must present competent evidence from which a jury could reasonably find in her favor. Ridgewood Board of Education v. N.E. for M.E., 172 F.3d 238, 252 (3d Cir. 1999); Woods v. Bentsen, 889 F.Supp. 179, 184 (E.D.Pa. 1995).

DISCUSSION

Legal Principles

In a cause of action brought pursuant to 42 U.S.C. § 1983, plaintiff must establish both that the alleged conduct was committed by a person acting under color of law and that the

conduct deprived plaintiff of rights, privileges or immunities secured by the United States Constitution or the laws of the United States. Hicks v. Feeney, 770 F.2d 375, 377 (3d Cir. 1985).

Section 1983 is not a source of substantive rights. Rather, it only provides "a method for vindicating federal rights elsewhere conferred." Graham v. Connor, 490 U.S. 386, 393-394, 109 S.Ct. 1865, 1870, 104 L.Ed.2d 443, 453 (1989). Thus, Section 1983 does not provide plaintiff a right to be free of injury whenever a State may be characterized as the tortfeasor. Rather, plaintiff must show the deprivation of a federally protected right. Paul v. Davis, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976).

This matter involves the facts and circumstances of the stop and subsequent search of plaintiff and her vehicle. The Fourth Amendment of the United States Constitution prohibits "unreasonable searches and seizures" by the government. The United States Supreme Court has held that stopping a vehicle and detaining its passengers is a seizure under the Fourth Amendment. See United States v. Hensley, 469 U.S. 221, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985).

The protections of the Fourth Amendment extend to brief investigatory stops of persons or vehicles that fall short of traditional arrest. An investigatory stop short of arrest is

valid if based upon a reasonable suspicion that criminal activity is afoot. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Stated another way, the "investigatory stop must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity." United States v. Cortez, 449 U.S. 411, 417, 101 S.Ct. 690, 695, 66 L.Ed.2d 621, 628 (1981).

In evaluating the constitutionality of a police traffic stop, most courts agree that an objective analysis of the facts and circumstances surrounding the stop is appropriate. United States v. Johnson, 63 F.3d 242, 245 (3d Cir. 1995). In reviewing such cases, the court must look at the totality of the circumstances of each case to determine whether the detaining officers have a particularized and objective basis for suspecting legal wrongdoing. United States v. Arvizu, 534 U.S. 266, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002).

In Arvizu, the United States Supreme Court noted that the concept of reasonable suspicion is somewhat abstract and further noted that reasonable suspicion cannot be reduced to "a neat set of legal rules". 534 U.S. at 274, 122 S.Ct. at 751, 151 L.Ed.2d at 750. The determination that probable cause exists does not require the exclusion of the possibility of innocent conduct, and any factor alone may be susceptible to innocent explanation. 534 U.S. at 277, 122 S.Ct. at 753, 151 L.Ed.2d

at 753. The bottom line is that all the facts and circumstances surrounding an event must be taken into account together and not looked at individually in a vacuum.

The court must give due weight to the experience of the officers when viewing the stop in its entirety. United States v. Rickus, 737 F.2d 360 (3d Cir. 1984). In addition, the reputation of an area for criminal activity is a factor upon which an officer may legitimately rely. 737 F.2d at 365. However, a mere hunch by the officer is insufficient to justify a stop. Terry, supra. Moreover, an officer's state of mind at the time of the challenged action is not a consideration. Johnson, 63 F.3d at 246.

Finally, an investigative stop must be reasonably related in scope to the justification for its initiation. Rickus, 737 F.2d at 365. To justify a greater intrusion, the totality of the circumstances known to the police officer must establish reasonable suspicion or probable cause to support the intrusion. A lawful stop is not "carte blanche" for an officer to engage in unjustified action. See Johnson, 63 F.3d at 247.

In this case, all seven counts of plaintiff's Amended Complaint allege violations of Section 1983. Moreover, Counts One through Four all deal directly with the stop of plaintiff on February 8, 2005. We apply the legal analysis above to each count and discuss each count individually below.

Qualified Immunity

Defendants Lake and French argue that because the decision to pull over plaintiff's vehicle was made by Officers Faulkner and Sedor, defendants Lake and French are entitled to qualified immunity, and Count One should be dismissed against them for that reason. Defendant Kummerer argues that she is entitled to qualified immunity because Officer Marino summoned her to the scene and requested her to perform a strip search, and she believed that plaintiff had consented to the search.

For the following reasons, we agree with defendant Lake and dismiss Count One against him. However, for the reasons expressed below, we disagree with defendants French and Kummerer and find that they are not entitled to qualified immunity.

Qualified Immunity is intended to shield government officials from liability for civil damages resulting from the performance of discretionary functions and serves to protect government officials from the burdens of litigation. See Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). To defeat the defense of qualified immunity asserted by Officer Lake and Sergeant French, plaintiff must prove that defendants violated a "basic, unquestioned constitutional right" of plaintiff and that defendants knew or reasonably should have known that their conduct would violate

those rights. 457 U.S. at 815, 102 S.Ct. at 2737, 73 L.Ed.2d at 408.

The court must consider two questions as a matter of law: (1) taken in the light most favorable to plaintiff, "do the facts show the officer's conduct violated a constitutional right?"; and (2) was the right clearly established--meaning were the contours of the right "sufficiently clear that a reasonable official would understand that what he was doing violates that right." Saucier v. Katz, 533 U.S. 194, 201-202, 121 S.Ct. 2151, 2156, 150 L.Ed.2d 272, 281-282 (2001). We address the applicability of qualified immunity to Officer Lake, Sergeant French, and Officer Kummerer, individually.

Officer Lake

We conclude that Officer Lake is entitled to qualified immunity on Count One of plaintiff's Amended Complaint. Specifically, the evidence taken in the light most favorable to plaintiff reveals that all Officer Lake did in this case was to utilize his marked police cruiser to effectuate the stop of plaintiff's vehicle. He did this at the request of Officers Faulkner and Sedor. Officer Lake did not approach plaintiff's vehicle when it stopped. Officers Faulkner and Sedor performed this act.

Officer Lake's only other participation in this case was running a computer check of plaintiff's license and

registration on his onboard computer. Officer Lake was not involved in any of the searches in this case, did not approach or talk to plaintiff or her passenger, and was not involved in any decision-making at the scene of the stop.

Defendants rely on the decision of the United States Court of Appeals for the Second Circuit in Martinez v. Simonetti, 202 F.3d 625 (2d Cir. 2000) and the decision of the United States Court of Appeals for the Seventh Circuit in Gordon v. Degelmann, 29 F.3d 295 (7th Cir. 1994) for the proposition that police officers are entitled to rely on information communicated by fellow police officers when making probable cause determinations. We find these cases persuasive.

As noted by the Seventh Circuit in Gordon:

> Whether the [stop] is lawful depends on the information available to the police collectively; if the person issuing the radio bulletin or authorizing the wanted poster had probable cause to do so, the facts need not be present to the mind of the person making the [stop]. Fear of personal liability if the bulletin or poster turns out to be erroneous would interfere with valuable institutions of law enforcement. Giving the [stopping] officer immunity would shift the liability back to the person who issued the erroneous instructions [here, Officers Faulkner and Sedor], simultaneously protecting all of the interests involved.

29 F.3d at 300. (Internal citations omitted.)

In this case, all Officer Lake did was respond to the radio call by Officers Faulkner and Sedor for a marked police

vehicle to pull over a suspect based upon Officers Faulkner and Sedor's belief that a drug transaction had just taken place. Officer Lake was permitted to rely on his fellow officers' determination. Martinez, supra; Gordon, supra.

Therefore, taking the facts in the light most favorable to plaintiff, it cannot be said that Officer Lake's conduct violated a constitutional right because he believed the determination by his fellow officers amounted to reasonable suspicion or probable cause to stop plaintiff. Saucier, supra. Accordingly, Officer Lake is entitled to qualified immunity.

Sergeant French

Regarding the qualified immunity of Sergeant French, we conclude that he is not entitled to qualified immunity. Sergeant French was intimately involved in the search of plaintiff and her vehicle. Moreover, he was the ranking officer at the scene on the evening of February 8, 2005. The issues in this case revolve around whether plaintiff consented to the search of her person and vehicle. If she did not consent, then the facts of this case would indicate that the police may have overstepped their authority.

Sergeant French was the ranking officer at the scene and had the authority to stop the intrusion and permit plaintiff to leave after nothing was found in her pockets, on her person or in her vehicle. A strip search of plaintiff, if not consented

to, was not reasonable based upon the facts and circumstances known to the police collectively. Sergeant French cannot be dismissed when there is a factual dispute about whether consent was given in this case.

More specifically, unlike Officer Lake, Sergeant French's participation in this event was not limited solely to stopping plaintiff's vehicle. In fact, Sergeant French played no role in pulling over plaintiff's vehicle. However, whether plaintiff was illegally arrested does not turn solely on whether her initial detainment was illegal. Rather, in looking at the totality of the circumstances surrounding the entire event we conclude that a jury could find that plaintiff was not free to leave after the initial detention.

Accordingly, taking the facts in the light most favorable to plaintiff (that the initial stop was illegal and that plaintiff did not give consent to any search) based upon the facts articulated by defendants for the stop, the personal participation of Sergeant French in all the police activities after the initial stop and because the requirements of reasonable suspicion and probable cause are well-settled, Terry, supra, we conclude that Sergeant French is not entitled to qualified immunity on Count One.

Officer Kummerer

On the issue of the qualified immunity of Officer Kummerer, we conclude that she is not entitled to qualified immunity for the following reasons. As stated earlier, we must address two questions in determining whether Officer Kummerer is entitled to qualified immunity: (1) taken in the light most favorable to plaintiff, "do the facts show the officer's conduct violated a constitutional right?"; and (2) was the right clearly established--meaning were the contours of the right "sufficiently clear that a reasonable official would understand that what he was doing violates that right." Saucier, supra.

In this case, taking the facts in the light most favorable to plaintiff, the police did not have consent, a warrant or exigent circumstances to conduct a strip search. Thus, plaintiff's right under the Fourth Amendment to be free from unreasonable searches and seizures was violated.

Next, we conclude based upon the decision of the Third Circuit Court of Appeals in Good, supra, the right to be free from a strip search without consent, a warrant or exigent circumstances is a clearly established right. While defendant Kummerer contends that she believed that plaintiff gave consent to the other officers, plaintiff disputes this and also maintains that she objected to the search by Officer Kummerer when she advised her that she had foot ulcers and should not disrobe and

take her shoes off in the back of the paddy wagon. Officer Kummerer denied that plaintiff said anything to her about any foot ulcers or complained about being strip searched in any way.

We conclude that if believed, plaintiff's protestations would raise a doubt regarding her consent to be searched. Officer Kummerer would not then be able to rely on the alleged consent given to her fellow officers. Without valid consent, a warrant or exigent circumstances, Officer Kummerer should not have performed the strip search in this case. Accordingly, because of the factual issues in dispute, it is inappropriate to conclude that Officer Kummerer is entitled to qualified immunity. Thus, we deny defendant Kummerer's motion for summary judgment on this basis.

Count One (Illegal Arrest)

In Count One of her Amended Complaint, plaintiff contends that she was illegally arrested on the evening of February 8, 2005. Plaintiff further contends that Allentown Police Officers Lake, Faulkner and Sedor, together with Sergeant French perpetrated this illegal arrest.

A person is in custody when she either is arrested formally or her freedom of movement is restricted to the degree associated with a formal arrest. United States v. Willaman, 437 F.3d 354, 359 (3d Cir. 2006). To be in custody when a person has not been formally arrested "something must be said or done by

the authorities, either in the manner of approach or in the tone or extent of their questioning, which indicates that they would not have heeded a request to depart or allow the suspect to do so." Steigler v. Anderson, 496 F.2d 793, 799 (3d Cir. 1974) (quoting United States v. Hall, 421 F.2d 540, 545 (2d Cir. 1969)).

There is no requirement for police officers to give Miranda warnings to every person they question. Oregon v. Mathiason 429 U.S. 492, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977). Miranda warnings are only required when the person police are questioning is in custody. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

Finally, there are a number of factors that courts consider when determining whether a person is in custody. These factors include:

> (1) whether the officers told the suspect [she] was under arrest or free to leave; (2) the location or physical surroundings of the interrogation; (3) the length of the interrogation; (4) whether the officers used coercive tactics such as hostile tones of voice, the display of weapons, or physical restraint of the suspect's movement; and (5) whether the suspect voluntarily submitted to questioning.

Willaman, 437 F.3d at 360.

In this case, plaintiff asserts that she and her passenger were pulled over by Officer Lake and that there was neither reasonable suspicion, nor probable cause to pull over her

vehicle. Plaintiff contends that this initial police intrusion and subsequent actions by the police in searching her person and vehicle constitute an illegal arrest without probable cause. Plaintiff further asserts that she was given Miranda warnings during the investigation.

In addition, plaintiff contends that when the police first approached her vehicle they were combative and demanded to know where the drugs were and required her to open her mouth and proceeded to search her, her passenger and her vehicle. Plaintiff denies stating that she used drugs and vehemently denies this accusation.

Defendants admit that plaintiff's vehicle was pulled over and that she and her passenger were briefly detained for questioning about plaintiff's activities. Defendants do not dispute that plaintiff was given Miranda warnings. However, defendants contend that plaintiff's vehicle was pulled over based upon reasonable suspicion or probable cause to believe that plaintiff had engaged in a drug transaction and was transporting illegal drugs in her vehicle.

Defendants further contend that plaintiff was never arrested, and in fact was permitted to leave after completion of the alleged consensual searches of her person and vehicle. Defendants characterized the intrusion as "low key" and permitted plaintiff to smoke a cigarette while the search of her car was

proceeding. Furthermore, defendants allege that at her deposition, plaintiff admitted that she was never arrested. For the reasons expressed below, we disagree with defendants Faulkner, French and Sedor and find that there are genuine issues of material fact which preclude granting summary judgment in favor of these defendants regarding Count One.

Viewing the facts of this matter in the light most favorable to plaintiff as the non-movant, Anderson, supra, we conclude that there are numerous genuine issues of material fact in dispute including whether the officers had reasonable suspicion that criminal activity was afoot[7] or probable cause[8] when they stopped and detained plaintiff, whether plaintiff was in custody, whether she was free to leave, whether she consented to the search of her person and vehicle, the tone and tenor of the police in questioning plaintiff and what plaintiff's answers were to the questions of the various officers at the scene. These facts are all in dispute, are material and do not permit granting defendants' motion for summary judgment on Count One of the Amended Complaint in favor of defendants Faulkner, French or Sedor.

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[7] In other words, when they stopped plaintiff did the officers suspect that plaintiff had committed, was committing, or was about to commit, a drug offense, and was that suspicion reasonable?

[8] In other words, when they stopped plaintiff did the officers have probable cause to believe that a drug crime had been committed, and that plaintiff was the person who probably committed it, and was that belief reasonable?

Therefore, defendant's motion for summary judgment on Count One of plaintiff's Amended Complaint against defendants Faulkner, French and Sedor is denied. As stated above, the motion for summary judgment of defendant Lake is granted because he is entitled to qualified immunity.

Counts Two (Vehicle Search) and Three (Pat-Down Search)

Count Two of plaintiff's Amended Complaint avers a Section 1983 cause of action for illegal search of her vehicle by defendants French, Faulkner and Sedor. Count Three alleges an illegal pat-down search of plaintiff by defendants French, Faulkner and Sedor. For the following reasons, we deny defendant's motion for summary judgment on Counts Two and Three of plaintiff's Amended Complaint.

A review of the record in this matter, in the light most favorable to plaintiff as the non-moving party, as required by Rule 56 of the Federal Rules of Civil Procedure, reveals that there are disputes concerning material issues of fact, which preclude entry of summary judgment on behalf of defendants. These disputes include, but are not limited to: (1) whether plaintiff gave consent to search her person; (2) whether plaintiff gave consent to search her vehicle; (3) what answers plaintiff gave to were the questions posed by police; and (4) whether the detention of plaintiff by the police was reasonable in its scope.

There are competing explanations of the events surrounding the forgoing issues which require credibility determinations by a jury. All of these issues are material disputes concerning plaintiff's claim for violation of Section 1983 and thus preclude the grant of summary judgment. Accordingly, we deny Defendants' Motion for Summary Judgment regarding Counts Two and Three.

Count Four (Strip Search)

Count Four of plaintiff's Amended Complaint asserts defendants Kummerer, French, Faulkner, Sedor and Marino conducted an unreasonable body-cavity search of plaintiff's mouth and an unreasonable strip search of her person. Specifically, plaintiff contends that immediately after stopping her vehicle, Officer Marino ordered her out of the vehicle and directed her to open her mouth so he could inspect it. In addition, plaintiff contends that Officer Marino summoned Officer Kummerer by police radio to come to the scene to conduct a strip search of plaintiff and her passenger.

Defendants contend that they had reasonable suspicion or probable cause for the initial stop of plaintiff's vehicle and that she consented to all searches of her person and vehicle, including the search of her mouth and the strip search. Furthermore, defendants contend that plaintiff gave consent to every search in this case.

Finally, defendant Kummerer contends that she is entitled to qualified immunity because she relied on the other officers who she alleges received consent to perform the strip search. For the following reasons, we deny all defendants motion for summary judgment on Count Four.

Strip searches are governed by the Fourth Amendment's prohibition on unreasonable searches and seizures. Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979). It is well-settled that the strip search of a person's body is only permissible with consent, a valid search warrant or exigent circumstances. Good v. Dauphin County Social Services for Children & Youth, 891 F.2d 1087, 1092 (3d Cir. 1989).

In this case, defendants assert that plaintiff gave verbal consent. Plaintiff denies giving consent. There was no search warrant issued for a strip search, and we conclude that there were no exigent circumstances that would warrant the police to conduct a warrantless strip search. Accordingly, because the issue of consent is disputed, and because consent is a material fact which must be decided by a jury, we conclude that defendants are not entitled to summary judgment.

Civil Conspiracy

In Count Five of her Amended Complaint plaintiff alleges a cause of action for civil conspiracy against all the officers involved in this case who did not file police reports.

Plaintiff further contends that this failure to file police reports restricted her access to the court.

Defendants contend that plaintiff's claim of civil conspiracy fails because plaintiff fails to implicate any federal right as a result of defendants' failure to write police reports. Specifically, defendants rely on the decision of United States Magistrate Judge Jacob P. Hart in Bush v. City of Philadelphia, No. Civ.A. 98-0994, 1999 U.S.Dist. LEXIS 11428 (E.D.Pa. July 16, 1999)(Hart, M.J.) and the cases relied upon in that decision. For the following reasons, we agree with defendants and grant their motion for summary judgment on Count Five of plaintiff's Complaint.

To allege a civil conspiracy under Section 1983, plaintiff must plead that:

> "a combination of two or more persons to do a criminal act, or to do an unlawful act by unlawful means for an unlawful purpose." "It is not enough that the end result of the parties' independent conduct caused plaintiff harm or even that the alleged perpetrators of the harm acted in conscious parallelism." "Nor is it enough to show that...the state actors might have had a common goal or acted in concert unless there is a unconstitutional action by virtue of a mutual understanding or agreement."

Fullman v. Philadelphia International Airport, 49 F.Supp.2d 434, 444 (E.D.Pa. 1999). (Citations omitted.)

Section 1983 is not a source of substantive rights. Rather, it only provides a method for vindicating federal rights

conferred elsewhere in the Constitution and federal statutes. See Graham v. Connor, 490 U.S. 386, 393-394, 109 S.Ct. 1865, 1870, 104 L.Ed.2d 443, 453-454 (1989). "Thus, not every wrong committed by a state actor provides grounds for a § 1983 action." Bush, 1999 U.S.Dist. LEXIS 11428 at *9.

Plaintiff alleges that because defendants in this case, and other officers in other unknown instances, failed to file police reports when a strip search was done without a warrant in the back of a paddy wagon (searches defendants contend were done with consent), the lack of documentation has impeded plaintiff from investigating any other similar incidents, and made it impossible to identify a class of other plaintiffs that could bring suit against defendants for these warrantless searches.

More specifically, plaintiff contends that because of the failure to file incident reports of these encounters, plaintiff and the purported class of similarly situated plaintiffs who have been subjected to the type of search done in this case are unable to discover the circumstances under which the searches were performed; the rate at which such searches uncovered contraband; to whom these searches were reported; who ratified these searches; whether these searches were consensual; the identities, including race and gender of the individuals searched; and the conditions under which these searches were

performed. For the following reasons, we disagree with plaintiff.

Initially, we note that this case is neither a class action nor a proposed class action. Thus, whether there is some theoretical class of similarly situated potential plaintiffs is irrelevant to the issues in this case. All of the reasons advanced by plaintiff above relate to a proposed class of plaintiffs. Moreover, at the time of this incident, defendant police officers were not required to file a police report regarding every activity they perform.[9] Furthermore, we are unaware of any federal statutory or Constitutional right to have a police report filed.

Plaintiff does have a Constitutional right of access to the courts. This right arises in a variety of contexts. Olender v. Township of Bensalem, 32 F.Supp.2d 775, 785 (E.D.Pa. 1999). In Chambers v. Baltimore and Ohio Railroad Company, 207 U.S. 142, 28 S.Ct. 34, 52 L.Ed. 143 (1907) the United States Supreme Court stated that "the right to sue and defend in the courts" is one of the many privileges of citizenship guaranteed

[9] On March 10. 2005, after the investigation of this incident by the Office of Professional Standards of the Allentown Police Department, Chief of Police Joseph C. Blackburn issued new directives regarding strip searches and other matters. The new directive required, among other things, that strip searches shall not be conducted on any person not in custody, shall not be conducted on the street and all strip searches must be documented. See March 10, 2005 Allentown Police Department Directive of Chief of Police Joseph C. Blackburn attached as Exhibit H to Appendix G of the Appendix of Exhibits to Defendants' Statement of Facts in Support of Their Motion for Summary Judgment.

by the United States Constitution. 207 U.S. at 148, 28 S.Ct. at 35, 52 L.Ed. at 146. A right of access to the courts is also encompassed within the First Amendment's right to petition the government for redress of grievances. See California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 92 S.Ct. 609, 30 L.Ed.2d 642 (1972).

Moreover, there exists a due process right under the Fourteenth Amendment precluding state actors "from preventing individuals from obtaining access to the civil courts." Brown v. Grabowski, 922 F.2d 1097, 1113 (3d Cir. 1990). The right of access to courts also includes a right to learn facts necessary to seek redress for Constitutional violations of individual rights. 922 F.2d at 1113 n. 10.

In this case, plaintiff contends that the reason that she cannot produce evidence to support her claim in Count Seven (a rouge policy of warrantless strip searches) is because of the failure of defendants to file police reports in the alleged hundreds of strip searches that were conducted without any police report being filed. Thus, plaintiff contends that because she cannot seek redress on Count Seven, this supports her claim in Count Five. We disagree.

As stated above, plaintiff has no statutory or Constitutional right to have police reports filed. Moreover, plaintiff has brought this case based upon the incident involving

her. What happened to others is not relevant to whether there was a violation of the Fourth Amendment in this case or whether plaintiff gave consent in this case.

Plaintiff has not provided even a scintilla of evidence that defendants conspired to deny her any statutory or Constitutional right in this case. As stated succinctly by Magistrate Judge Hart in Bush "not every wrong committed by a state actor provides grounds for a § 1983 action. Cases decided in this court and elsewhere reveal that conspiracy by police officers to file false reports and otherwise coverup wrongdoing by fellow officers is not in and of itself a constitutional violation." 1999 U.S. Dist. LEXIS 11428 at *9.

In this case plaintiff complains that the police did not file police reports where they contend that the individuals involved consented to a search and no drugs, guns or other illegal contraband was found. In plaintiff's case, she has clearly averred that she did not give consent for any of the searches conducted by police. It will be for a jury to determine what happened on the night of February 8, 2005. However, plaintiff has not shown that she has suffered any statutory or Constitutional violation to support her cause of action for civil conspiracy.

Accordingly, we grant Defendants' Motion for Summary Judgment on Count Five of plaintiff's Amended Complaint.

Racial Profiling

In Count Six of her Amended Complaint, plaintiff contends that "defendant City of Allentown, intentionally, purposefully and knowingly had a policy, practice, regulation or custom of promoting, allowing, condoning, and/or acquiescing in invidiously, discriminatory racial profiling by Allentown Police Officers."[10] More specifically, plaintiff contends that she was singled out by Officers Faulkner and Sedor because she was traveling with an Hispanic female and an African-American male.

Defendant contends that plaintiff is not a member of a protected class and that the City of Allentown cannot be found liable under Section 1983 on the basis of respondeat superior liability. We agree.

To prevail on a claim for racial profiling, plaintiff must show that the challenged law enforcement practice had a discriminatory effect and was motivated by a discriminatory purpose. Bradley v. United States, 299 F.3d 197 (3d Cir. 2002). To prove discriminatory effect, plaintiff must show that she is a member of a protected class and that she was treated differently from similarly situated individuals in an unprotected class. 299 F.3d at 206.

A municipality may only be found liable under Section 1983 where the municipality itself causes the constitutional

[10] Plaintiff's second Amended Complaint at paragraph 80.

violation at issue. Liability may not be based upon the doctrine of respondeat superior or vicarious liability. Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 694-695, 98 S.Ct. 2018, 2037-2038, 56 L.Ed.2d 611, 638.

Under the circumstances of this case, plaintiff, a white female, has not established that she is a member of a protected class.[11] Moreover, plaintiff has not submitted any evidence that any "similarly situated" person in an unprotected class was treated more favorably for the same conduct.

Finally, plaintiff fails to establish any formal policy of the Allentown Police Department permitting or encouraging racial profiling. On the contrary, defendants rely on an adopted, formal policy prohibiting police officers from using race, ethnicity, gender, sexual orientation, religion, socio-economic status or disability of a person as the sole reason for stopping a vehicle, issuing a citation, making an arrest, conducting a field interview, investigative detentions, seizing assets, seeking asset forfeiture or conducting a search.[12]

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[11] We do not consider plaintiff's gender as the defining element of her claim. Rather, we consider her ethnic background, as a Caucasian as the relevant issue before the court.

[12] See General Order 4-10 effective January 9, 2004, attached as Exhibit A to Appendix F of the Appendix of Exhibits to Defendants' Statement of Facts in Support of Their Motion for Summary Judgment.

In addition, plaintiff fails to establish a custom of racial profiling or a widespread practice of racial profiling so well-settled that policy-making officials can be said to have had actual or constructive knowledge of it. At most, based upon the testimony of Officers Faulkner and Sedor, they took the race of plaintiff's passengers as one of many factors that led them to believe that a drug deal had occurred.

Even taking the testimony of Officers Faulkner and Sedor in the light most favorable to plaintiff (that they were engaged in racial profiling) it is nothing more than proof of a single instance of unconstitutional conduct by a municipal employee without policy-making authority. This single instance is insufficient to establish a custom or policy. City of Oklahoma City v. Tuttle, 471 U.S. 808, 823-824, 105 S.Ct. 2427, 2437, 85 L.Ed.2d 791, 804 (1985).

Accordingly, because plaintiff has not established facts to support her claim for racial profiling, we grant Defendants' Motion for Summary Judgment and dismiss Count Six of plaintiff's Amended Complaint.

Strip Search Policy

In Count Seven of her Amended Complaint, plaintiff asserts a cause of action under Section 1983 for an alleged rogue policy of conducting warrantless strip searches in the back of paddy wagons. Plaintiff contends that Sergeant French was the

police officer who initiated this policy. Plaintiff avers that defendants concede that there is uncontradicted evidence of this long-standing policy. Furthermore, plaintiff contends that taking the facts in the light most favorable to her as the non-moving party, we must deny Defendants' Motion for Summary Judgment on Count Seven.

Defendants contend that there was a long-standing custom in the Allentown Police Department of conducting consensual, on-site strip searches for suspected drug activity. However, defendants assert that there is no evidence that the custom was initiated by Sergeant French or that such a custom is unconstitutional. In addition, defendants contend that even if Sergeant French was the person who initiated this custom, he is not a policy-maker for the City of Allentown or the Allentown Police Department. For the following reasons, we agree.

It is well-settled that individual defendants who are policymakers may be liable under Section 1983 if it is shown that such defendants, "with deliberate indifference to the consequences, established and maintained a policy, practice or custom which caused [the] constitutional harm." A.M. v. Luzerne County Juvenile Detention Center, 372 F.3d 572, 586 (3d Cir. 2004)(quoting Stoneking v. Bradford Area School District, 882 F.2d 720, 725 (3d Cir. 1989)).

We agree with defendants that plaintiff has offered no evidence that Sergeant French either had policy-making authority or, in fact, initiated the custom of doing strip searches, however characterized, in the back of paddy wagons. Plaintiff cannot avert summary judgment with speculation or by resting on the allegations in her pleadings, but rather must present competent evidence from which a jury could reasonably find in her favor. Ridgewood, supra. Because plaintiff has come forth with no evidence to support Count Seven, we grant Defendants' Motion for Summary Judgment and dismiss Count Seven.

CONCLUSION

For all the following reasons, we grant in part and deny in part Defendants' Motion for Summary Judgment.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LORI A. REPPERT,	)	
	)	Civil Action
Plaintiff	)	No. 05-CV-01403
	)	
vs.	)	
	)	
APRIL KUMMERER,	)	
DONALD FRENCH,	)	
MICHAEL FAULKNER,	)	
THOMAS SEDOR,	)	
MARK MARINO,	)	
WILLIAM LAKE and	)	
CITY OF ALLENTOWN,	)	
	)	
Defendants	)	

O R D E R

NOW, this 6th day of September, 2006, upon consideration of Defendants' Motion for Summary Judgment, which motion was filed February 9, 2006; upon consideration of

Plaintiff's Response to Defendants' Motion for Summary Judgment, which response was filed March 17, 2006; upon consideration of the briefs of the parties; and for the reasons expressed in the accompanying Opinion,

IT IS ORDERED that Defendant's Motion for Summary Judgment is granted in part and denied in part.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment on Count One of plaintiff's second Amended Complaint is granted in part and denied in part.

IT IS FURTHER ORDERED that the motion for summary judgment of defendant Officer William Lake on Count One of plaintiff's second Amended Complaint is granted.

IT IS FURTHER ORDERED that Count One of plaintiff's second Amended Complaint is dismissed against defendant William Lake only.

IT IS FURTHER ORDERED that in all other respects Defendants' Motion for Summary Judgment on Count One of plaintiff's second Amended Complaint is denied.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment regarding Counts Two, Three and Four of plaintiff's second Amended Complaint is denied.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment on Count Five of plaintiff's second Amended Complaint is granted.

IT IS FURTHER ORDERED that Count Five of plaintiff's second Amended Complaint is dismissed.

IT IS FURTHER ORDERED that William Lake is dismissed as a defendant in this action.[13]

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment regarding Counts Six and Seven of plaintiff's second Amended Complaint is granted.

IT IS FURTHER ORDERED that Counts Six and Seven are each dismissed from plaintiff's second Amended Complaint.

BY THE COURT:

/s/ JAMES KNOLL GARDNER

James Knoll Gardner

United States District Judge

[13] Defendant William Lake is named in Counts One and Five only. Because we have dismissed defendant Lake from Count One and have dismissed Count Five in its entirety, it is appropriate to dismiss defendant Lake from this action.